Petition

Office-Supreme Court, U.S.
FILED
AUG 31 1981
ALEXANDER L. STEVAS,
CLERK

81-581

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. _____

GEORGIA M. BEATTY,

Petitioner,

-against-

COMMISSIONER OF INTERNAL REVENUE

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

Ms. Georgia M. Beatty
In Propria Persona
11017 Gloria Street
Houston, Texas 77013

QUESTION PRESENTED FOR REVIEW

Where a United States Statute mandates, "In All Courts of the United States the parties may plead and conduct their own case personally or by counsel" may a Tax Court Judge deprive a party, pro se, to represent herself and to order the party to allow the opposing attorney to counsel her and to let him prepare stipulations for her or else her petition would be dismissed for lack of prosecution, which deprived petitioner of her guaranteed constitutional rights, specifically the Fifth Amendment.

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IN THE
SUPREME COURT OF THE UNITED STATES
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GEORGIA M. BEATTY,
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COMMISSIONER OF INTERNAL REVENUE
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Georgia M. Beatty prays that a writ of certiorari issue to review the judgment rendered March 30, 1981 by the United States Court of Appeals for the Fifth Circuit affirming the lower trial court's judgment.

OPINIONS BELOW

The Tax Court Judgment is set forth in Appendix C, Page 5a.

The Opinion by the United States Court of Appeals for The Fifth Circuit is set forth in the Appendix A, Page 1a.

The Final Judgment and denial of the petitioner's petition for rehearing is set forth in Appendix B, Page 2a.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. 2101 (C).

THE CONSTITUTIONAL PROVISIONS AND THE UNITED STATES STATUTE

CONSTITUTION OF THE UNITED STATES

Fifth Amendment

> "No person..shall be ... deprived of life, liberty, or property, without due process of law..."

Seventh Amendment

> "In suits at common law, where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved,..."

Constitution of the State of Texas

"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

Article 1, Section 19

STATUTES OF THE UNITED STATES

Title 28 USC 1654

"In all courts of the United States the parties may plead and conduct their own case personally or by counsel."

RULES OF PRACTICE AND PROCEDURE, UNITED STATES TAX COURT

Rule 91

"...The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged and all evidence which fairly should not be in dispute... "

QUESTION PRESENTED FOR REVIEW

Where a United States Statute mandates, "In all Courts of the United States the parties may plead and conduct their own case personally or by counsel" may a Tax Court Judge deprive a party, pro se, to represent herself and to order the party to allow the opposing attorney to counsel her and to let him prepare stipulations for her or else her petition would be dismissed for lack of prosecution, which denied petitioner her guaranteed constitutional rights, specifically the Fifth Amendment.

STATEMENT OF CASE

This case was initiated in the United States Tax Court, Washington, D.C., on July 14, 1978, and because of its dismissal petitioner requested that it be reinstated by an amended petition, which was granted

on December 22, 1978.

After petitioner's amended petition was accepted and restored to the Tax Court Docket a new tax court judge was assigned to the case and subsequently on September 7, 1979, the said Judge Fay sent petitioner a letter (not an order) pertaining to the scheduled trial on September 24, 1979. The said Judge Fay's letter smacked of bias and prejudiced attitutes against the petitioner because of her pro se status, and the letter is proof that the presiding Judge sought to demand that unless she permitted the opposing counsel to represent her that she would not be permitted to have her case adjudicated, such as:

> "I thought it advisable to notify you regarding some of our rules of practice and procedure, especially since you are representating yourselves...I expect you immediately to communicate with counsel for the respondent

> and to corporate with him to the end that a proper stipulations of facts can be prepared for filing with the Court. You are required to submit your records to respondents; counsel for his inspection prior to trial so that proper stipulations of facts can be prepared and your failure to submit such records to respondent's counsel for examination to the execution of a stipulation of facts as required by the court's rules..."

After petitioner received the said letter and noting the biased and prejudiced attitude of the said Judge Fay she made an investigation and she noted for at least fourteen years he had been employed as chief counsel for respondent, special trial attorney for respondent, assistant head of the Civil Division for respondent assistant regional counsel for respondent, and was a United States Senate Associate of the Administration Assistants of Secretaries of the American Bar Association where they try to get more

taxes, a section of taxation. This knowledge led to a petitioner's Motion For Presiding Judge William F. Fay to Disqualify himself from this case; and/or a Trial By Jury being filed in the case on September 24, 1979, (which was as soon as the petitioner could file it after receiving Judge Fay's letter).

The above case was scheduled for trial at the trial session of the Court in Houston, Texas, on September 24, 1979. Before the Trial Session commenced, the petitioner Georgia M. Beatty presented the opposing counsel a copy of her stipulation pleading and requested that he sign it, he refused. The opposing counsel testified later that petitioner presented him a stipulation before trial, See Appendix D, Page 12a. The petitioner's case was called and she appeared ready for trial. The Trial Tax Court Judge Fay refused sua sponte to allow her stipu-

lations to be filed and refused to permit her to try her case. He refused, without reading petitioner's stipulations, to permit her to file her pleading and various motions, and another pleading for judgment on the petition. Rule 91 (c) of the Tax Court Rules was violated by the respondent because the respondent did not file stipulations, nor did the respondent file papers showing the parts of petitioner's stipulations which were unacceptable pursuant to Rule 91, (d),(f) of the Tax Court Rules. Also, the respondent did not say anything in open court on September 24, 1979, about the stipulation, but instead the trial Judge Fay commenced saying to the petitioner she was in violation of Rule 91, Tax Court Rules, without even permitting her to say she filed her stipulations. Then the Trial Judge's attention was gotten by the opposing counsel that a motion for him to disqualify himself was pending before him. The Tax Court Judge in open court denied the motion to disqual-

ify himself without a reason which violated Sections 144 and 455, Title 28, USC. A Judge may rule on the sufficient of the affidavit but cannot pass upon or dispute the truth of the factual allegations.

The Tax Court Judge informed the petitioner in open court that unless she met with the opposing counsel and let him advise her she could not proceed with her petition and the Tax Court Judge further said:

> "and if you have some evidence regarding the substantive matter of your case, he'll look at it and he's...as they say, an officer of the court, and he's required to receive that documentation and to consider it. And I'm sure he will, because I've seen him before the Court before. He's not interested in ... in winning something that he's not entitled to win. He's going to look at it objectively, and if he thinks he can accept it, he will, he will prepare for you a stipulation." Transcript, September 24, 1979, 1 through 21. (See Appendix D, Page 1a).

The Trial Judge directed her to meet with the opposing counsel and let him advise her how to prosecute her petition or else he would not permit her to proceed to trial all in violation of Title 28 USC 1654. Petitioner met with the opposing counsel, and he told her that unless she did just what he said he would go back to the Judge and tell him she had refused to cooperate. The petitioner once again attempted to get the opposing counsel to sign her stipulation on the parts he agreed and to furnih her his stipulations. He refused. The respondent never filed stipulations and never filed papers showing respondent opposed the petitioner's filed stipulation as Rule 91 (d) and (f) requires.

The petitioner discovered later by obtaining transcripts that the opposing counsel appeared before the Trial Judge and the opposing counsel said:

> " ... I met with petitioner outside the courtroom...and at this time petitioner made certain argument ...when I requested that she meet with me to...so I could examine her records...She walked away...Transcript, 1 through 9, September 24, 1979, Page 2.

On September 25, 1979, a hearing without the petitioner being notified, was conducted by the Tax Court pertining to scheduled cases, and according to the transcript petitioner's case was the first to be called. Respondent's counsel appeared and notified the Trial Judge that opposing Counsel did not approve of petitioner's stipulations and moved the court to dismiss the petitioner's petition on the grounds of failure to prosecute.

The Trial Court Judge took the motion under advisement and notified the petitioner by mail she had to January 2, 1980, to reply which petitioner did. Also on the same day, September 25, 1979, after talking to opposing counsel and although many other litigants

were present to have their petitions adjudicated, the Trial Court Judge abruptly discontinued the scheduled trials and went back to Washington, D.C. without hearing any cases.

On January 23, 1980, the Trial Judge Fay filed his Memorandum Opinion in which it granted the motion to dismiss on the grounds that petitioner had refused to comply with the rules of the Tax Court, nothing was said about respondent refusing to file stipulations, and that the petitioner had filed hers.

The United States Court of Appeals for the Fifth Circuit affirmed the Tax Court's Final Judgment without an opinion, See Appendix, 1a and 2a, and the petitioner's petition for a rehearing was denied on June 1, 1981, See Appendix 3a and 4a.

REASONS FOR ALLOWANCE OF WRIT

The Tax Court Judge and The United States C O U R T OF A P P E A L S FOR THE FIFTH

Circuit have denied petitioner access to the Court to redress her grievances by the Court actions. The said Courts have decided the federal question of great substances --- the right to be one's own counsel and to due process of law -- therefore determined by Court in a way not in accord with the applicable decisions of this Court.

A

Appendix D, Page 12a, is presented to this Court to show the Tax Court Judge would not allow petitioner to prosecute her petition unless she permitted the opposing counsel to represent her and to prepare papers for her. By the Tax Court's actions, petitioner was denied the right to represent herself and of due process of law. Additional evidence of violation of petitioner's rights is in the Tax Court's Opinion, Page 9a

"The letter further explained that petitioner would have to meet with

> respondent's counsel and present her records to him for this purpose, and that the burden was on her to show the adjustments in the deficiency notice were incorrect. See Rule 142 (a), Tax Court Rules of Practice and Procedure. Petitioner did not meet with respondent's counsel prior to trial."

The Trial Judge was without jurisdiction to demand petitioner to submit to opposing counsel for legal advise which violates well ground principles and laws in our adversary system. Rule 91 does not require the petitioner to do what the Tax Trial Judge's letter showed, but clearly says: "parties are required to stipulated matters not privileged which are relevant to the case as to which agreement can or fairly should be reached"

Also, Rule 142 (a) referred in the Tax Court's opinion is for the trial which the presiding Judge Fay refused to set down even after the petitioner appeared on September 24, 1979, and even though she filed her Pe-

tition of Stipulations of Facts and the opposing Counsel did not. Evidence shows the presiding Judge did not set the case for trial and said in open court he had not:

> "We haven't set the case down for trial yet." Page 6, Transcript, September 24, 1979.

> "Because Petitioner has refused to comply with the rules of this Court and because she failed to appear at trial, respondent's motion to dismiss for failure properly to prosecute is granted. Rule 123 (b)." Court's Opinion, page 11a.

Rule 123 (b) says when a party failed to plead or otherwise proceed as provided by the Rules, he may be held in default. The petitioner abided by the rules but the opposing counsel did not, and yet the Tax Court Judge punished the petitioner instead of the respondent pursuant to Rule 123 (b), Tax Court Rules. The petitioner brought this to the attention of the court in her objection to the respondent's Motion To Dismiss

and apparently her notice of objection was ignored because the Tax Court Judge did not refer to her objections.

> "The Court also explained to petitioner that by filing her petition she chose to appear before the tax court that she would therefore have to comply with our Rules." The Tax Court's Opinion, Appendix 8a.

There is evidence petitioner abided by Rule 91 as she filed her Petition of Stipulations and the respondent did not. See Appendix D, Page 12a.

The Tax Court Judge refused to even permit the petitioner to show she had complied with the Rules. There was no scheduled hearing or motion before the court showing the Petition of Stipulations was not accepted as is provided in the Tax Court Rules, Rule 91 (d) (f). The Tax Court Judge decided to reject the Stipulations because Counsel for respondent had not approved previously,

and because petitioner had not permitted her records to be audited by opposing counsel had nothing to do with the petition, nor that she had not let him tell her what to stipulate. Rule 91 does not require such shenanigans.

Even after the Court received the Petition of Stipulations, the Court refused to set the case down for trial. The statement that the case was called for trial is an erroneous statement and the transcript is evidence of that fact.

The Trial Court, Judge Fay, attempted to make petitioner have a private trial with the opposing counsel and apparently never intended to permit the petitioner to have a public trial. See Appendix D and E, Pages 129, 179. Even though the presiding Judge Fay may have not realized it, he was biased and prejudiced toward the petitioner, and the way he

treated another petitioner's attorney at the call of the calendar on September 24, 1979, before he called this petitioner's case also shows he is biased toward other petitioners and he is attempting to force them to have closed trials with the respondent, the Internal Revenue Service Counsel, which is a violation of the Tax Court's Rules of the greatest magnitude, and the laws are enactments of Congress, and the Trial Judge violated guaranteed constitutional rights of the petitioner. The presiding Judge Fay acted without any authority at all.

DOES THE TAX COURT JUDGE HAVE AUTHORITY TO MAKE THE PETITIONER ACCEPT THE RESPONDENT'S COUNSEL AS HER ADVISOR.

Title 28 USC 1654 and the Tax Court Rules are a bar against the Tax Court Judge refusing to permit the petitioner access to

the Tax Court unless she permitted the opposing Counsel to advise her. Evidence is before this Court that the Tax Court Judge violated the law in this regard.

The Tax Courts Opinion, Page 6:

> "...and because she failed to appear at trial."

is an untrue statement, as the Transcript shows petitioner certainly appeared for trial. See Appendix D and E, Pages 12a, 17a.

Petitioner respectfully urge upon the Court that the substantial constitutional issue involve a question of the highest public importance that every person has a right to petition for a redress of grievances and with the right to represent oneself. The Final Judgment and affirmance in this cause by the lower courts are in conflict with the mandate of this Court, Faretta V. California, 45 L.(Ed) 562:

> "In forcing Faretta...to accept against his will a... defender,...courts deprived him of his constitutional rights."

The lower courts deprived petitioner of her Fifth Amendment right by depriving her the right to prosecute her petition thus depriving her of property without due process of law:

> "No person...shall be...deprived of life, liberty, or property, without due process of law..."

CONCLUSION

The Petition For A Writ of Certiorari must be granted.

Georgia M. Beatty

Ms. Georgia M. Beatty
11017 Gloria Street
Houston, Texas 77013
In Propria Persona

PROOF OF SERVICE

Three copies of the foregoing has been sent by the U. S. Mail to Solicitor General of the United States, Room 5614, Department of Justice, Washington D. C., 20530

Georgia M. Beatty

Ms. Georgia M. Beatty

APPENDIX A

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

NO. 80-1611
Summary Calendar

GEORGIA M. BEATTY,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal From the Decision of The
United States Tax Court

(March 30, 1981)

BEFORE BROWN, AINSWORTH AND GARZA, CIRCUIT JUDGES.

PER CURIAM: AFFIRMED. SEE LOCAL RULE 21./[1]

COSTS ARE TAXES AGAINST PETITIONER - APPELLANT.

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1 See N.L.R.B. V. Amalgamated Clothing Workers of America, 1970, 430 F. 2d 966

ISSUED AS MANDATE

APPENDIX B

U.S. COURT OF APPEALS
FILED
JUN 1 1981

Gilbert F. Ganucheau
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

NO. 80-1611

GEORGIA M. BEATTY,

Petitioner-appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-appellee.

---

appeal from the Decision of the U. S. Tax Court

APPENDIX B

Before BROWN, AINSWORTH AND GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED THAT the petiton for re-hearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:

See Rule 41 FRAP and LOCAL Rule 17 for Stay of the Mandate

APPENDIX C

T. C. Memo. 1980-21

UNITED STATES TAX COURT

GEORGIA M. BEATTY, PETITIONER V.
COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 8509-78. Filed January 23, 1980.

GEORGIA M. BEATTY, pro se.

William T. Overton, for the respondent.

MEMORANDUM OPINION

FAY, Judge: Respondent determined the following deficiencies and additions to tax in petitioner's Federal income taxes:

Year	Deficiency	Sec.6651(a)	Sec. 6653(a)	Sec. 6654
1974	$2,157.48	$ 708.10	$ 141.62	$ 63.65
1975	2,745.62	867.89	173.58	111.05
1976	3,394.86	1,179.43	235.89	139.59

This case comes before us on respondent's motion to dismiss for failure properly to prosecute... vacated its order entering a decision for respondent, and petitoner was granted leave to file an amended petition in which she disputed the entire amount of the deficiency for each year in issue.

About three months prior to trial, counsel for respondent invited petitioner to meet informally to exchange information and discuss a stipulation of agreed facts. Two to three weeks before trial, the Court sent petitioner a form letter sent to many taxpayers handling their own cases explaining that Rule 91, Tax Court Rules of Practice and Procedure, requires all parties to stipulate facts not in dispute to the fullest extent possible. The letter further explained that petitioner would have to meet with respondent's counsel and present

her records to him for this purpose, and that the burden was on her to show the adjustments in the deficiency notice were incorrect. See Rule 142(a), Tax Court Rules of Practice and Procedure. Petitioner did not meet with respondent's counsel prior to trial.

In due course her case came on for trial. Petitioner appeared at the call of the calendar and filed a "Motion for presiding Judge William M. Fay to disqualify Himself from this Case; And/or a Trial by jury." The grounds for the motion were that the Court had shown bias and prejudice by requiring petitioner to submit her records to respondent and that the trial judge had, at one time during his professional career, been employed by respondent. This motion was denied in open court. See Laird v. Tatum, 409 U. S. 824 (1972) (Memorandum of J. Rehnquist); United States v. Kelly, 556 F.

2d 257, 262-263 (5th Cir. 1977), cert. denied 434 U. S. 1017 (1978); Neil v. United States 205 F. 2d 121, 125 (9th Cir. 1953). See also Swanson v. Commissioner, 65 T.C. 1180 (1976) (no jury trial in Tax Court).

The Court also explained to petitioner that by filing her petition she chose to appear before the Tax Court and that she would therefore have to comply with our Rules. See Rule 123, Tax Court Rules of Practice and Procedure. Petitioner was again directed to meet with respondent and produce the records upon which she intended to rely so that facts could be stipulated and those matters not in dispute could be settled. Petitioner agreed, but subsequently refused to produce her records for respondent's inspection.

When the case was called for trial the next day, petitioner did not appear. She

instead submitted three documents entitled "Petitioner's Stipulation of Facts," "Petition for Judgment on the Pleadings," and "Memorandum to Support Stipulation of Facts, "Petitioner's Petition for Judgment on the Pleadings; and for a Trial by Jury." The general thrust of these documents is that because the adjustments in respondent's notice of deficiency were determined in the absence of adequate records, respondent made up the numbers. Petitioner apparently feels that by producing her records she would be waiving her constitutional rights.

These arguments are totally without merit. See United States v. Johnson, 577 F. 2d 1304, 1310-1311 (5th Cir. 1978); Wilkinson v. Commissioner, 71 T.C. 633 (1979). Petitioner bears the burden of demonstrating that respondent's determination is incorrect. Welch v. Helvering, 290 U.S. 111 (1933);

Rule 142, Tax Court Rules of Practice and Procedure. Furthermore, as the Court explained to petitioner when she appeared at the call of the calendar, the informal process by which parties are required to stipulate matters not in dispute in fundamental to this Court's efficient performance of its duties. International Air Conditioning Corp. v. Commissioner, 67 T.C. 89 (1976); Branerton Corp. v. Commissioner, 61 T.C. 691 (1974).

All of petitioner's other arguments are the type of frivolous so-called "constitutional" issues that have become all too familiar in "tax protester" cases and have been consistently rejected by this and other Courts. See White v. Commissioner, 72 T.C. 1126 (Sept. 20, 1979) and cases cited; Wilkinson v. Commissioner, 72 T.C. 1126 (Sept. 20, 1979) and cases cited

Wilkinson v. Commissioner, supra. and cases cited.

Because petitioner has refused to comply with the rules of this Court and because she failed to appear at trial, respondent's motion to dismiss for failure properly to prosecute is granted. Rule 123(b), Tax Court Rules of Practice and Procedure; Freedson v. Commissioner, 565 F. 2d 954 (5th Cir. 1978), affg. 67 T.C. 931 (1977).[3] See Sec. 7459(d).

Accordingly,

Decision will be entered for the respondent.

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[3] See also Pradmore v. Commissioner, T.C. Memo. Memo. 1979-150; Bendickson v. Commissioner, T.C. Memo. 1979-67; Fogle v. Commissioner, T.C. Memo. 1978-200; Soester v. Commissioner, T.C. Memo. 1977-385.

APPENDIX-D

TRANSCRIPT, VOL. 1

documents before the trial to Respondent's counsel, so that they can be stipulated or not stipulated, depending on the nature of them. And if you don't do that, you don't comply with the Rules of the Court, the Court has the right to dismiss your case for failure to properly prosecute. I don't want to do that. And I'm saying if you're not willing to comply I will be forced to do it. Now, it's that simple. And I asked you to come in and see Respondent's counsel last week or the week before. You haven't done it. I'm giving you another opportunity to sit down and show Respondent's counsel exactly what these are. You're not a lawyer, but I'll direct Respondent's counsel to look at them in an objective way, and to

come back here and notify the Court if he cannot take them as evidence; that there is no deficiency. Now it's that simple.

MS.BEATTY: Well the deficiency was made on --- on ----

THE COURT: I'm not talking about the merits of the case.

MS. BEATTY: -- absence of any kind of records ---

THE COURT: I'm talking about the mechanics of the case now. These are the mechanics that I'm talking to you about. We're not going to get into the substance of matters in the case until we get a stipulation until both parties sit down and

MR. OVERTON: Certainly, Your Honor.

THE COURT: -- If we proceed, we've got an empty verdict. It doesn't mean anything. Now as far as you're concerned, Mrs. Beatty, you will have to comply with the Rules of the Court -- I's not saying your not going

but I say, this is a requirement. So you're going to have to sit down with Respondent's counsel, and if you have some evidence regarding the substantive matter of your case, he'll look at it and he's -- as they say, an officer of the Court, and he's required to receive that documentation and to consider it. And I'm sure he will, because I've seen him before this Court before. He's not interested in -- in winning something that he's not entitled to win. He's going to look at it objectively. And if he thinks he can accept it, he will; if he thinks he cannot accept it, he will prepare for you a stipulation, saying that here is a document composed of so-and-so, and it is in Petitioner's possession, et cetera, et cetera. And they go down and they spell out all these things. Now, if you proceed to trial without this, and I'm not saying that I'd allow you to, but if you did pro-

ceed to trial without it, you could have a technical objection from Respondent and the evidence might not get in the record. Now if it's stipulated, it will be in the record, and there is nothing he can do to keep it out, from any objection. And this is why the stipulation process is so important------.

the Court's requirements, your Honor.

THE COURT: Yes, would you detail your observation regarding this so-called stipulation of facts --

MR. OVERTON: The stipulation does not include any --- it does not include any reference to her income activities during the years at issue, which is the subject matter of this case.

THE COURT: Well, this proposed stipulation is merely her conclusion as to what respondent did in his deficiency notice. Is that right?

MR. OVERTON: This is correct. And the statutory notice of deficiency, of course, Your Honor, reflects the Respondent's position ---

THE COURT: It strikes the court that this is more in the form of an answer than -- more in the form of a petition that it is a stipulation of fact.

MR. OVERTON: Respondent agrees, Your Honor.

THE COURT: Go ahead.

MR. OVERTON: Yesterday morning, after the calendar call, I --- Ms. Beatty did ask me to sign the stipulation of facts but before we could have any meaningful conversation about it, she simply entered the elevator and left, Your Honor, and that's the last contact I've had with her.

THE COURT: Now, it's obvious that this is not a stipulation of fact. It's merely a recitation of Respondent's.

APPENDIX-E

TRANSCRIPT, VOL. III

THE COURT: Re --

MR. OVERTON: for Presiding Judge William M. Fay to disqualify himself.

THE COURT: Right.

MR. OVERTON: There is also the petition for judgment on the pleadings filed -- served by Georgia M. Beatty on Respondent's counsel as well as Petitioner's stipulation of facts. I have a copy of those if the Court would like to deal with them at this time.

THE COURT: May I see the proposed stipulation of facts? Would you address yourself -- you've read this proposed stipulation of facts --

MR. OVERTON: Yes, Your Honor.

THE COURT: -- entitled Petitioner's stipulation of facts. Would you address yourself so that, please.

MR. OVERTON: Your Honor, this is the case in -- there are two dockets, as you know, in this case, James Beatty and Georgia M. Beatty.

THE COURT: Now, the docket number that is on this, the Petitioner's stipulation of facts, is Docket 8509-78.
That's Georgia. That's Mrs. Beatty.

MR. OVERTON: That is correct, Your Honor. During the years 1974 and 1975 and 1976, Georgia M. Beatty was a real estate saleslady in the Houston, Texas, area. Her husband was a salaries employee during these years.

Mr. Beatty filed separate income tax returns for those years, reflecting his one-half of -- his community income, reflecting only, however, his -- one-half of his wages earned during these years. In addition, Ms. Beatty filed Forms 1040 for the years 1974, 1975, and 1976. She listed her name

and address on these returns but objected to really submitting any affirmation on the basis.

THE COURT: Is that return before the Court yet?

MR. OVERTON: No, it's not, Your Honor. I would like to stipulate these returns as Mrs. Beatty has not included these returns in her stipulation of facts --

THE COURT: You asked her to stipulate these?

MR. OVERTON: No, I have not, Your Honor. Ms. Beatty has very little conversation with Respondent's counsel.

THE COURT: And the only thing --

MR. OVERTON: Yesterday afternoon --

THE COURT: All right, fine, Go ahead.

MR. OVERTON: As the Court indicated in its order, what we need to do is this case is go through and have a meaningful stipu-

lation as to the sources of Ms. Beatty's income. Ms. Beatty has refused to meet with Respondent's counsel so that we could have a meaningful stipulation prepared. The stipulation that she's offered does not meet with...

Opposition

Office-Supreme Court, U.S.
FILED
OCT 1981
ALEXANDER L. STEVAS,

No. 81-581

In the Supreme Court of the United States

OCTOBER TERM, 1981

GEORGIA M. BEATTY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-581

GEORGIA M. BEATTY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In this federal income tax case, petitioner seeks review of the decision below dismissing her case for failure to prosecute.[1]

The pertinent facts may be summarized as follows: For each of the taxable years 1974 through

[1] Petitioner has reproduced only part of the Tax Court's opinion as Appendix C of her petition. We have accordingly included a complete copy of the opinion as Appendix A, *infra*. The Tax Court's opinion is reported at 39 T.C.M. 927. The order of the court of appeals affirming the decision of the Tax Court is noted at 642 F.2d 1213.

1976, petitioner filed a "protest return," which contained her name, address and marital status, but which otherwise contained no information disclosing her taxable income (App. A, *infra*, 1a-2a). The Commissioner of Internal Revenue reconstructed petitioner's taxable income and determined deficiencies totaling $8,837.96, plus penalties and interest (Doc. 15, Ex. A).[2] Petitioner thereafter filed a petition in the United States Tax Court asserting various constitutional arguments against the imposition of an income tax (Doc. 2). The petition was dismissed for failure to state a claim upon which relief could be granted (App. A, *infra*, 2a; Doc. 9). Upon petitioner's motion, however, the Tax Court vacated its order dismissing the case and permitted petitioner to file an amended petition (Pet. App. 6a).

Approximately three months prior to trial, counsel for the Commissioner sent a letter to petitioner requesting a conference for the purpose of stipulating undisputed facts and exchanging evidence in preparation for trial (Pet. App. 6a; Doc. 26, Ex. A; Doc. 27). In addition, approximately two weeks before trial, the Tax Court sent a form letter[3] to petitioner advising her, *inter alia*, that Rule 91 of the Rules of Practice and Procedure of the Tax Court requires all parties to stipulate facts not in dispute to the fullest extent possible. Petitioner, however, refused to meet with counsel for the Commissioner for the purpose of entering a stipulation (Pet. App.

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[2] "Doc." refers to the documents contained in the original record filed in the court of appeals as numbered by the Clerk of the Tax Court.

[3] A copy of that letter was included in Appendix "I" to petitioner's brief in the court of appeals. We have reproduced it in Appendix B, *infra*.

6a-7a). On September 24, 1979, when the case was called for trial,[4] the Tax Court judge explained to petitioner that she was required to comply with the rules and directed her to meet with the Commissioner's counsel for the purposes of exchanging evidence and entering a stipulation of undisputed facts. The Tax Court further advised petitioner that the trial would be scheduled either that afternoon or the next morning (Doc. 23 at 9-14, 19-21; Pet. App. 8a).[5] Petitioner, however, did not meet with counsel for the Commissioner. When the case was called for trial the next day, she failed to appear.[6]

Counsel for the Commissioner thereafter filed a motion to dismiss the case (Doc. 26; Doc. 27). After

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[4] On September 24, 1979, petitioner filed a "Motion For Presiding Judge William M. Fay To Disqualify Himself From This Case; And/Or A Trial By Jury." The grounds for the motion were that Judge Fay had shown bias and prejudice by ordering petitioner to submit her records to the Commissioner and that the trial judge had, at one time during his professional career, been employed by the Internal Revenue Service. This motion was denied in open court (Pet. App. 7a; Doc. 23 at 15-16).

[5] In addition, the Clerk advised the Tax Court that he had spoken to petitioner on the afternoon of September 24, 1979, and informed her that the case would be called at 10:00 a.m. on September 25, 1979 (Doc. 25 at 4-5).

[6] Petitioner instead submitted three documents entitled "Petitioner's Stipulation of Facts," "Petition for Judgment on the Pleadings," and "Memorandum to Support Stipulation of Facts; Petitioner's Petition for Judgment on the Pleadings and for a Trial by Jury." The general thrust of these documents was that because the adjustments in the Commissioner's notice of deficiency were determined in the absence of adequate records, the Commissioner made up the numbers (Pet. App. 8a-9a).

affording petitioner an opportunity to respond to the motion, the Tax Court dismissed the case on the grounds that petitioner had refused to comply with the rules and had failed to appear at trial (Pet. App. 11a). The Tax Court noted that petitioner's argument that the deficiencies were incorrect because they were determined without adequate records was "totally without merit" and that her other arguments "are the type of frivolous, so-called 'constitutional' issues that have become all too familiar in 'tax protester' cases and have been consistently rejected by this and other Courts" (Pet. App. 9a-10a). On February 1, 1980, the decision was entered, and on March 18, 1980, the Tax Court denied petitioner's motion to vacate and her motion for reconsideration. The court of appeals affirmed (Pet. App. 1a-2a).

1. The decision below correctly upheld the Tax Court's dismissal of petitioner's case. It is well settled that dismissal for lack of prosecution is a matter within the discretion of the trial court and will not be overturned on review except for an abuse of discretion. *Freedson* v. *Commissioner*, 565 F.2d 954, 955 (5th Cir. 1978); *Prairie* v. *Commissioner*, 469 F.2d 1085, 1086 (8th Cir. 1972); see also *National Hockey League* v. *Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976); *Sigliano* v. *Mendoza*, 642 F.2d 309, 310 (9th Cir. 1981). As the record makes clear, the Tax Court informed petitioner that Rule 91 required stipulating those facts that were susceptible to stipulation (Doc. 23 at 8, 21) and that failure to comply with the rule could result in dismissal of her case (Doc. 23 at 11, 21). Despite this warning, petitioner refused to meet with counsel for the Commissioner (Doc. 25 at 11; Doc. 31 at 4), declined

any attempt to enter a meaningful stipulation [7] (Doc. 25 at 11), and failed to appear at trial (Doc. 25 at 2, 4-5; Doc. 31 at 3; Pet. App. 8a). In these circumstances, the Tax Court's order of dismissal was fully justified.

2. Petitioner contends (Pet. 13, 19-20) that the decision below violated her Fifth Amendment rights because she was denied the right to represent herself and thus deprived "her of property without due process of law." The record shows, however, that petitioner was permitted to represent herself and was afforded a full opportunity to comply with the rules. The Tax Court explained in detail petitioner's obligation to comply with the rules and informed her of the sanctions that could be imposed for noncompliance. Petitioner simply chose to disregard the rules by refusing to enter into a stipulation with regard to undisputed facts and she failed to appear at trial. Thus, there is no substance to petitioner's claim that she was deprived of an opportunity to present her case.

3. Finally, petitioner contends (Pet. 6, 8-9, 17-18) that Judge Fay was biased and improperly denied her motion to disqualify himself from the case. Petitioner has made no showing, however, that the Tax Court was influenced by some extrajudicial matter that prejudiced her case, nor has she demonstrated facts upon which the court's impartiality reasonably could be questioned. See *United States* v.

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[7] The Tax Court noted (Doc. 25 at 12) that her "proposed stipulation is merely her conclusion as to what [the Commissioner] did in his deficiency notice" and consequently it "is more in the form of an answer * * *—more in the form of a petition than it is a stipulation of fact." Thus, the Tax Court concluded that what she filed was "not a stipulation of fact" (*ibid.*).

Grinnell Corp., 384 U.S. 563, 583 (1966); *Davis* v. *Board of School Commissioners of Mobile County*, 517 F.2d 1044, 1052 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976); *United States* v. *Cowden*, 545 F.2d 257, 265 (1st Cir. 1976), cert. denied, 430 U.S. 909 (1977); 28 U.S.C. 455. Instead, petitioner's grievance is based upon her disagreement with the Tax Court's ruling that she was required to meet with counsel for the Commissioner for the purpose of stipulating those matters susceptible to stipulation. Thus, her complaint concerns the court's adverse ruling, not personal bias, and is insufficient as a matter of law to constitute grounds for disqualification.[8]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

OCTOBER 1981

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[8] Despite petitioner's claim to the contrary (Pet. 8-9), the decision of a judge on whether to disqualify himself in a particular case is a matter within the discretion of the judge and is normally not appealable. *In re Virginia Electric & Power Co.*, 539 F.2d 357 (4th Cir. 1976).

APPENDIX A

T.C. Memo. 1980-21

UNITED STATES TAX COURT

Docket No. 8509-78

GEORGIA M. BEATTY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Filed January 23, 1980

Georgia M. Beatty, pro se.

William T. Overton, for the respondent.

MEMORANDUM OPINION

FAY, *Judge*: Respondent determined the following deficiencies and additions to tax in petitioner's Federal income taxes:

		Additions to Tax		
Year	Deficiency	Sec. 6651(a)[1]	Sec. 6653(a)	Sec. 6654
1974	$2,157.48	$ 708.10	$141.62	$ 63.65
1975	2,745.62	867.89	173.58	111.05
1976	3,934.86	1,179.43	235.89	139.59

This case comes before us on respondent's motion to dismiss for failure properly to prosecute.

Petitioner Georgia M. Beatty filed "tax protester returns" for each of the years in issue.[2] These "re-

[1] All section references are to the Internal Revenue Code of 1954, as amended.

[2] See, e.g., *United States* v. *Johnson*, 577 F.2d 1304, 1311 and cases cited (5th Cir. 1978).

turns" were Forms 1040 which contained her name and address, were signed by her, and stated she was married to James E. Beatty, but otherwise contained no information disclosing her taxable income. Each "return" was accompanied by between 36 and 115 pages of photocopied materials supporting various constitutional objections to Federal income taxation.

The petition initially filed in this case challenged this Court's "unlawful Equity Jurisdiction," demanded a jury trial in a Federal common law court, and declared that petitioner would

> not be arbitrarily, hauled into a Chancery Court to show cause, for anything, at every whim of an Unelected Bureaucrat (Executive Department.) By an Unlawful Equitable Writ or application issuing from the Executive or Administrative Department. (90 Days False Assessment) [.]

On respondent's motion and a hearing in due course, this petition was dismissed for failure to state a claim upon which relief could be granted. However, this Court later vacated its order entering a decision for respondent, and petitioner was granted leave to file an amended petition in which she disputed the entire amount of the deficiency for each year in issue.

About three months prior to trial, counsel for respondent invited petitioner to meet informally to exchange information and discuss a stipulation of agreed facts. Two to three weeks before trial, the Court sent petitioner a form letter sent to many taxpayers handling their own cases explaining that Rule 91, Tax Court Rules of Practice and Procedure, requires all parties to stipulate facts not in dispute to the fullest extent possible. The letter further ex-

plained that petitioner would have to meet with respondent's counsel and present her records to him for this purpose, and that the burden was on her to show the adjustments in the deficiency notice were incorrect. See Rule 142(a), Tax Court Rules of Practice and Procedure. Petitioner did not meet with respondent's counsel prior to trial.

In due course her case came on for trial. Petitioner appeared at the call of the calendar and filed a "Motion for Presiding Judge William M. Fay to Disqualify Himself from This Case; And/Or a Trial by Jury." The grounds for the motion were that the Court had shown bias and prejudice by requiring petitioner to submit her records to respondent and that the trial judge had, at one time during his professional career, been employed by respondent. This motion was denied in open court. See *Laird* v. *Tatum*, 409 U.S. 824 (1972) (memorandum of J. Rehnquist); *United States* v. *Kelly*, 556 F.2d 257, 262-263 (5th Cir. 1977), cert. denied, 434 U.S. 1017 (1978); *Neil* v. *United States*, 205 F.2d 121, 125 (9th Cir. 1953). See also *Swanson* v. *Commissioner*, 65 T.C. 1180 (1976) (no jury trial in Tax Court).

The Court also explained to petitioner that by filing her petition she chose to appear before the Tax Court and that she would therefore have to comply with our Rules. See Rule 123, Tax Court Rules of Practice and Procedure. Petitioner was again directed to meet with respondent and produce the records upon which she intended to rely so that facts could be stipulated and those matters not in dispute could be settled. Petitioner agreed, but subsequently refused to produce her records for respondent's inspection.

When the case was called for trial the next day, petitioner did not appear. She instead submitted

three documents entitled "Petitioner's Stipulation of Facts," "Petition for Judgment on the Pleadings," and "Memorandum to Support Stipulation of Facts; Petitioner's Petition for Judgment on the Pleadings; and for a Trial by Jury." The general thrust of these documents is that because the adjustments in respondent's notice of deficiency were determined in the absence of adequate records, respondent made up the numbers. Petitioner apparently feels that by producing her records she would be waiving her constitutional rights.

These arguments are totally without merit. See *United States* v. *Johnson*, 577 F.2d 1304, 1310-1311 (5th Cir. 1978); *Wilkinson* v. *Commissioner*, 71 T.C. 633 (1979). Petitioner bears the burden of demonstrating that respondent's determination is incorrect. *Welch* v. *Helvering*, 290 U.S. 111 (1933); Rule 142, Tax Court Rules of Practice and Procedure. Furthermore, as the Court explained to petitioner when she appeared at the call of the calender, the informal process by which parties are required to stipulate matters not in dispute is fundamental to this Court's efficient performance of its duties. *International Air Conditioning Corp* v. *Commissioner*, 67 T.C. 89 (1976); *Branerton Corp.* v. *Commissioner*, 61 T.C. 691 (1974).

All of petitioner's other arguments are the type of frivolous, so-called "constitutional" issues that have become all too familiar in "tax protester" cases and have been consistently rejected by this and other Courts. See *White* v. *Commissioner*, 72 T.C. 1126 (Sept. 20, 1979) and cases cited; *Wilkinson* v. *Commissioner*, *supra*, and cases cited.

Because petitioner has refused to comply with the rules of this Court and because she failed to appear at trial, respondent's motion to dismiss for failure

properly to prosecute is granted. Rule 123(b), Tax Court Rules of Practice and Procedure; *Freedson* v. *Commissioner*, 565 F.2d 954 (5th Cir. 1978), aff'g 67 T.C. 931 (1977).[3] See sec. 7459(d).

Accordingly,

Decision will be entered for the respondent.

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[3] See also *Pradmore* v. *Commissioner*, T.C. Memo. 1979-150; *Bendickson* v. *Commissioner*, T.C. Memo. 1979-67; *Fogle* v. *Commissioner*, T.C. Memo. 1978-200; *Soester* v. *Commissioner*, T.C. Memo. 1977-385.

APPENDIX B

UNITED STATES TAX COURT

September 7, 1979

Mr. and Mrs. James E. Beatty
11017 Gloria
Houston, Texas 77029

Re: James E. Beatty
Gloria M. Beatty
Docket Nos. 8258-78, 8509-78

Dear Mr. and Mrs. Beatty:

The above cases are scheduled for trial on the United States Tax Court session in Houston, Texas, commencing at 10:00 a.m. on September 24, 1979.

I note that the record indicates at the present time that you are representing yourselves at the forthcoming trial. In the interest of an orderly and efficient disposition of the trial calendar, I thought it advisable to notify you regarding some of our rules of practice and procedure, especially since you are representing yourselves.

There is enclosed herewith a copy of Rule 91 of the Rules of Practice and Procedure of this Court. Under that rule, and particularly paragraph (a) thereof, the parties are required to stipulate facts to the fullest extent possible. To this end, as the trial judge, I expect you immediately to communicate with counsel for the respondent and to cooperate with him to the end that a proper stipulation of facts can be prepared for filing with the Court at the call of the calendar of the trial session scheduled to commence in Houston at 10:00 a.m. on September 24, 1979. You are required to submit your records to respondent's counsel for his inspection prior to trial so that proper stipulation of facts can be prepared, and your failure to submit such records for examina-

tion may result in sanctions being imposed by the Court. Under the law, the deficiency notices are prima facie correct, and the burden is on you to show that the adjustments in the deficiency notices are without merit, and in order to carry that burden it will be necessary for you to present your records to respondent's counsel for examination preparatory to the execution of a stipulation of facts as required by the Court's rules.

You should understand that if such stipulation of fact is not ready for submission at the call of the calendar and if the Court determines that this is the result of your failure fully to cooperate in the preparation thereof, the Court may, either on respondent's motion or on its own motion, dismiss the cases for failure properly to prosecute and enter decisions against you in the full amount of the deficiencies and penalties set forth in the respondent's notices of deficiency.

I am sending a copy of this letter to counsel for the respondent. I am confident that he will cooperate with you as fully as I expect you to cooperate with him in the preparation of the stipulation of facts.

Very truly yours,
/s/ William M. Fay
WILLIAM M. FAY
Judge

Encl.
copy to: Mr. Harold Friedman
District Counsel
Internal Revenue Service
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